

FEB 26 1943

CHARLES ELMORE CROPLEY
CLERK

IN THE
Supreme Court of the United States

..... TERM, 1943

NO. **767**

MARCO REGINELLI,
Petitioner,

VS.

UNITED STATES OF AMERICA,
Respondent.

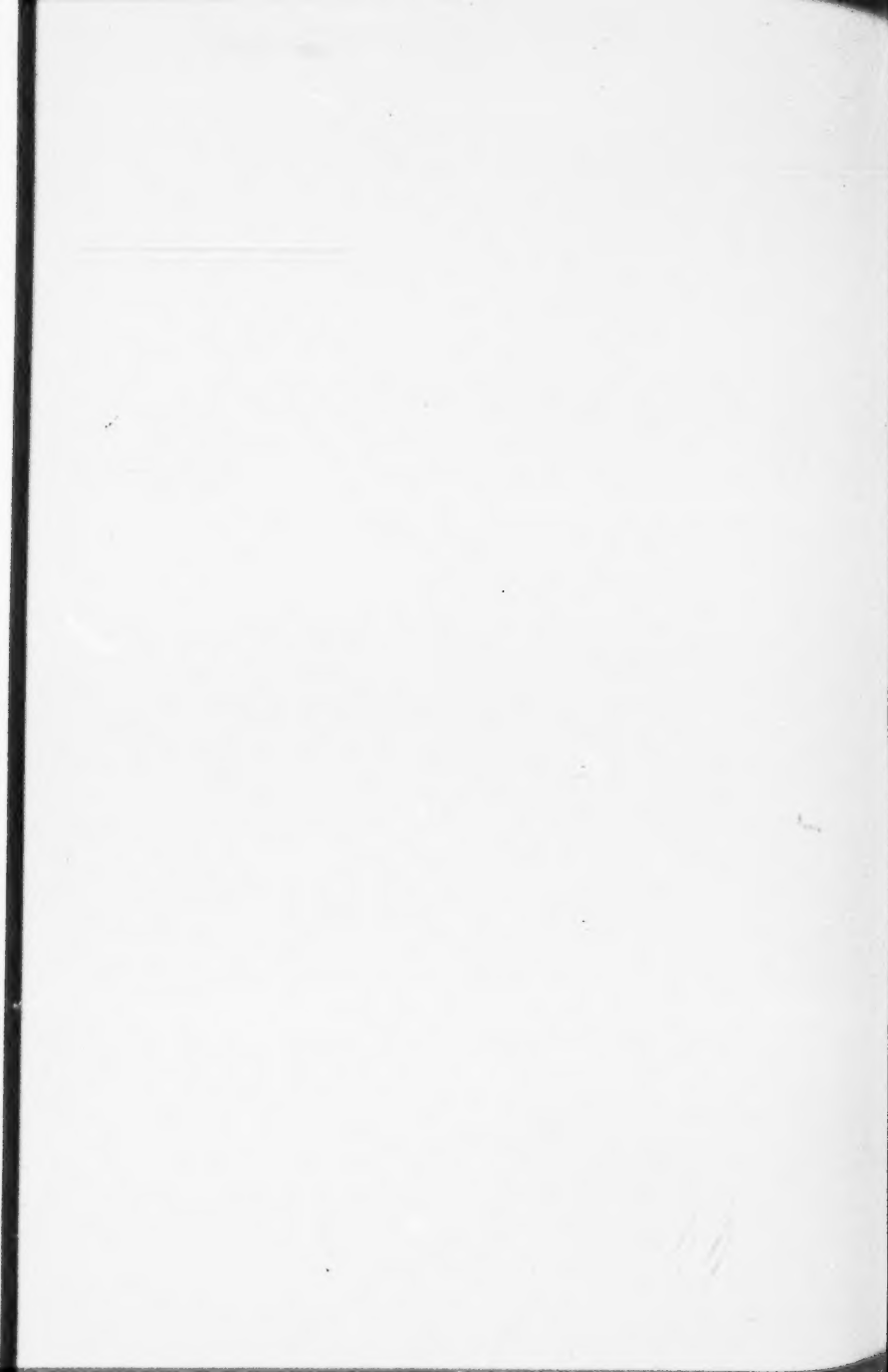
**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

and

BRIEF IN SUPPORT THEREOF

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Summary Statement of Matter Involved

IN THE SUPREME COURT OF THE UNITED STATES

February Term, 1943

Marco Reginelli, Petitioner

vs.

United States of America, Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT**

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Your petitioner respectfully represents:

I

SUMMARY STATEMENT OF MATTER INVOLVED

The petitioner was indicted in the District Court for the District of New Jersey for violation of the White Slave Traffic Act (18 U. S. C. A. 398, 399).

The indictment contained three counts charging, inter alia, as follows (R. 3a):

1. That the petitioner "did wilfully, unlawfully and feloniously, knowingly aid and assist in obtaining transportation for and in transporting in interstate commerce" one Louise Abate, "with intent and purpose * * * to induce,

Summary Statement of Matter Involved

entice and compel the said Louise Abate" to have sexual intercourse with him.

2. That the petitioner "did wilfully, unlawfully and feloniously, knowingly persuade, induce and entice and aid and assist in persuading, inducing and enticing" the said Louise Abate to go in interstate commerce from Camden, New Jersey to Miami, Florida "for the immoral purpose of illicit sexual intercourse with him" and "did thereby and by means of such persuading, inducing and enticing, knowingly cause and aid and assist in causing the said Louise Abate to go and to be carried and transported in interstate commerce."

3. That the petitioner did wilfully, unlawfully and feloniously, knowingly transport and cause to be transported in interstate commerce said Louise Abate "with the intent and purpose * * * to induce, entice and compel the said Louise Abate to engage in the immoral practice of illicit sexual intercourse with him."

The Government called as its first witness, Louise Abate, who testified that she was 22 years old and had known the petitioner for two years (R. 11a); that in January, 1942, petitioner took a trip to Miami, Florida; that she did not know when he left Camden, nor did she discuss the trip with him (R. 11a); that she received three telegrams from petitioner and that he telephoned her a few times (R. 12a-13a); that she at length told petitioner over the telephone that she was going to Florida for a vacation (R. 14a); that he objected because the weather was bad but that she insisted; that she asked him if he would pay the fare and he agreed to do so after talking to her father and receiving his consent (R. 14a); that petitioner made the reservation for the trip and paid the fare (R. 16a); that she took a plane from Philadelphia, Pennsylvania to Miami, Florida (R. 17a); that petitioner met her at the airport

Summary Statement of Matter Involved

in Florida and wanted to get her a room but she asked to be taken to his room at the President Madison Hotel to wash up before determining where she would stay (R. 27a); that she decided to stay with him and despite his objection, she insisted (R. 27a); that she had sexual relations with him a few times (R. 28a); that she ate her meals with petitioner and was continually in his company; and that after a ten days' stay petitioner paid her train fare to Philadelphia (R. 29a).

The next witness was Albert Tuller who was a clerk at the cigar stand in the President Madison Hotel. He testified that he saw both Miss Abate and the petitioner in the lobby of the hotel (R. 35a).

The Government then called Leon Kramer, the owner of the said cigar stand, who likewise testified that he saw the petitioner and Miss Abate on the beach and in the lobby (R. 36a).

Anna Johnson, a chambermaid, was the next witness. She testified that the petitioner and Miss Abate occupied the same room at the hotel and that although the room contained a single bed as well as a double bed, only the latter was used. She testified further that she found breakfast service in the room, sometimes for one, sometimes for two (R. 38a).

The final Government witness was Solomon Cohen, the manager of the hotel. He testified that defendant was registered from January 23, 1942 to February 22, 1942; that he paid \$6.70 per day till February 1st, when the rate became \$10.00 per day, which was "a seasonal jump" (R. 41a); that he had a record of only one occupant; that he had a record of telephone calls to Camden, one on January 23rd for \$12.15, one on January 27th for \$70.65, one on January 29th for \$23.95, one on January 31st for \$1.95 (R. 42a-43a).

Basis of Jurisdiction

After the Government had rested, petitioner moved for a directed verdict which motion was refused. The petitioner thereupon rested without offering any testimony and submitted certain points requesting the judge to give the jury binding instructions to render a verdict of not guilty on each count (R. 71a).

The trial Judge instructed the jury to return a verdict of not guilty on Count 2 of the indictment. The jury returned a verdict of guilty on Count 1 and not guilty on Count 3.

Petitioner filed a motion for a new trial (R. 74a) and the said motion was overruled and he was sentenced to a term of six months imprisonment and to pay a fine of \$1500.00 (R. 76a).

An appeal was taken to the Circuit Court of Appeals for the Third Circuit and the judgment of the District Court was affirmed (R. 84a).

II

BASIS OF JURISDICTION

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938 (28 U. S. C. A. 347).

III

QUESTIONS PRESENTED

1. Was the White Slave Act (the Mann Act) intended to apply to a situation where there is no element of prostitution or commercialized vice?

2. Should not this Court, in determining the true meaning of an Act of Congress, give serious consideration to the clear declarations of the framers of the Act as contained in the account of the legislative proceedings, and the opinions of the then Attorney General concerning the scope of the Act?

3. Was there sufficient evidence to submit to the jury on the question of petitioner's intent where the uncontradicted and unchallenged testimony of the government's principal witness negatives the existence of such intent?

4. Is it not the duty of a trial Judge to direct a verdict of not guilty where the circumstantial evidence presented does not exclude every hypothesis but that of guilt?

IV

REASONS RELIED UPON FOR THE ALLOWANCE
OF THE WRIT

1. The Mann Act was never intended to apply to a case of simple fornication, but the Circuit Court felt bound to follow the decision of this Court in *Caminetti v. United States*, 242 U. S. 470 (1916).

2. The decision in the *Caminetti* case has never been, but should be, reviewed by this Court in view of the fact that

(a) It was a decision by a Court divided five to three;

(b) The majority opinion is based upon an erroneous theory of statutory construction which has long since been discarded by this Court.

3. There was insufficient evidence to submit to the jury.

4. There is a conflict in the decisions of this Circuit on the question of the duty of a trial Judge in determining whether a case involving circumstantial evidence should be submitted to the jury. The decision in the present case is in conflict with other recent decisions of this Circuit and the majority of the other Circuits.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit commanding that Court to certify and to send to this Court for its review

Reasons Relied Upon

and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings herein; and that the judgment of the Circuit Court of Appeals for the Third Circuit be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

WILLIAM A. GRAY,
Counsel for Petitioner.